

SEXUAL CRIMES AGAINST CHILDREN PREVENTION ACT  
OF 1995

MARCH 28, 1995.—Committed to the Committee of the Whole House on the State  
of the Union and ordered to be printed

Mr. MCCOLLUM, from the Committee on the Judiciary,  
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 1240]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill  
(H.R. 1240) to combat crime by enhancing the penalties for certain  
sexual crimes against children, having considered the same, report  
favorably thereon with an amendment and recommend that the bill  
as amended do pass.

CONTENTS

	Page
The Amendment .....	2
Purpose and Summary .....	2
Background and Need for Legislation .....	3
Hearings .....	4
Committee Consideration .....	4
Vote of the Committee .....	4
Committee Oversight Findings .....	4
Committee on Government Reform and Oversight .....	5
New Budget Authority and Tax Expenditures .....	5
Congressional Budget Office Estimate .....	5
Inflationary Impact Statement .....	6
Section-by-Section Analysis and Discussion .....	6
Agency Views .....	8
Changes in Existing Law Made by the Bill, as Reported .....	8
Additional Views .....	10

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Sexual Crimes Against Children Prevention Act of 1995”.

**SEC. 2. INCREASED PENALTIES FOR CERTAIN CONDUCT IN SEXUAL EXPLOITATION OF CHILDREN.**

The United States Sentencing Commission shall amend the sentencing guidelines to increase the base offense level for offenses under section 2251 or 2252 of title 18, United States Code, by at least 2 levels.

**SEC. 3. INCREASED PENALTIES FOR USE OF COMPUTERS IN SEXUAL EXPLOITATION OF CHILDREN.**

The United States Sentencing Commission shall amend the sentencing guidelines with respect to an offense under—

(1) section 2251(c)(1)(A); or

(2) any of paragraphs (1) through (3) of section 2252(a);

of title 18, United States Code, to increase the offense level by at least 2 levels if a computer was used to transmit the notice or advertisement to the intended recipient or to transport or ship the visual depiction.

**SEC. 4. INCREASED PENALTIES FOR TRANSPORTATION OF CHILDREN WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY.**

The United States Sentencing Commission shall amend the sentencing guidelines to increase the base offense level for an offense under section 2423(a) of title 18, United States Code, by at least 3 levels.

**SEC. 5. PREDICATE OFFENSES FOR RICO.**

Section 1961(1)(B) of title 18, United States Code, is amended by striking “sections 1461–1465 (relating to obscene matter)” and inserting “chapter 71 (relating to obscenity)”.

**SEC. 6. TECHNICAL CORRECTION.**

Section 2423(b) of title 18, United States Code, is amended by striking “2245” and inserting “2246”.

**SEC. 7. REPORT BY THE UNITED STATES SENTENCING COMMISSION.**

Not later than 180 days after the date of the enactment of this Act, the United States Sentencing Commission shall submit a report to Congress concerning offenses involving child pornography and other sexual crimes against children. In this report the Commission shall include—

(1) an analysis of the sentences imposed for offenses under sections 2251, 2252, and 2423 of title 18, United States Code, and recommendations as to any modifications to the sentencing guidelines that may be appropriate with respect to those offenses;

(2) an analysis of the sentences imposed for offenses under sections 2241, 2242, 2243, and 2244 of title 18, United States Code, where the victim was under the age of 18 years, and recommendations as to any modifications to the sentencing guidelines that may be appropriate with respect to those offenses;

(3) an analysis of the type of substantial assistance that courts have recognized as warranting a downward departure from the sentencing guidelines relating to offenses under section 2251 or 2252 of title 18, United States Code;

(4) a survey of the recidivism rate for offenders convicted of committing sexual crimes against children, an analysis of the impact on recidivism of sexual abuse treatment provided during or after incarceration or both, and an analysis of whether increased penalties would reduce recidivism for these crimes; and

(5) such other recommendations with respect to the offenses described in this section as the Commission deems appropriate.

**PURPOSE AND SUMMARY**

H.R. 1240, the “Sexual Crimes Against Children Prevention Act of 1995,” strengthens the punishment for sexual crimes involving children by directing the United States Sentencing Commission to make specific modifications to its sentencing guidelines with respect to these crimes. The bill makes no modifications to the statu-

tory penalties for these crimes, nor does it create mandatory minimum penalties. The bill also amends the definition of “predicate acts” in the Racketeer Influenced and Corrupt Organizations Act so that all obscenity crimes will be deemed to the RICO predicate acts.

The United States Sentencing Commission was created by Congress in 1984 as an independent entity within the Judicial Branch. Its purpose is to develop guidelines for federal judges to use in sentencing offenders, so that disparity among the federal districts with respect to sentences imposed for similar crimes would be minimized. Each year the Commission recommends modifications to the guidelines, which take effect unless Congress affirmatively acts either to prevent their implementation or modify them. From time to time, Congress has also directed the Commission to make specific changes to the guidelines.

The guidelines provide for a base offense level for each crime committed. Specific increases to the base offense level are required when the sentencing judge determines that other specific factors exist with respect to the crime requiring enhancement of the offense level. After factoring in enhancements, and credits in some instances, the guidelines provide a total “offense level” number applicable for the crime committed. That number corresponds to a sentencing table which, together with considerations of prior criminal history, sets forth the appropriate sentencing range (in months) that the judge must employ when sentencing an offender. H.R. 1240 directs the Commission to make specific modifications to the guidelines applicable to offenses under sections 2251, 2252, and 2423(a) of Title 18 of the United States Code.

#### BACKGROUND AND NEED FOR THE LEGISLATION

H.R. 1240 is based, in part, on Title III of H.R. 11, the “Family Reinforcement Act.” H.R. 11 was contained in the “Contract with America,” and it addressed several challenges and difficulties facing American families, such as caring for elderly relatives and collecting child support. Title III pertained to child pornography and sexual abuse of children, two of the most destructive forces attacking today’s families. H.R. 1240 is built upon the conceptual framework of Title III of H.R. 11.

There is no adequate way to measure the damage caused by those who produce and sell child pornography. Child pornographers rob children of their innocence and leave them harmed for life. Society must not tolerate this behavior, and the federal government must have the resolve and the necessary tools to combat it. H.R. 1240 is designed to help ensure that the punishment imposed for these crimes is appropriate to the harm caused by that crime.

Perhaps the most significant feature of this bill is the direction to the United States Sentencing Commission to provide for an enhancement to the base offense levels in its guidelines in cases where the offender uses a computer to traffick in child pornography, or to distribute an advertisement seeking to buy or sell child pornography. Distributing child pornography through computers is particularly harmful because it can reach an almost limitless audience. Because of its wide dissemination and instantaneous transmission, computer-assisted trafficking is also more difficult for law

enforcement officials to investigate and prosecute. Additionally, the increasing use of computers to transmit child pornography substantially increases the likelihood that this material will be viewed by, and thus harm, children. Finally, the Committee notes with particular concern the fact that pedophiles may use a child's fascination with computer technology as a lure to drag children into sexual relationships. In light of these significant harms, it is essential that those who are caught and convicted for this conduct be punished severely.

#### HEARINGS

No hearings were held on H.R. 1240.

#### COMMITTEE CONSIDERATION

On March 16, 1995, the Subcommittee on Crime met in open session and ordered reported the bill H.R. 1240, as amended, by voice vote, a quorum being present. On March 22, 1995, the Committee met in open session and ordered reported the bill H.R. 1240, with amendment, by voice vote, a quorum being present.

#### VOTE OF THE COMMITTEE

Mr. Frank offered an amendment to strike section 5 of the bill concerning the inclusion of certain obscenity offenses as RICO predicate acts. The Frank amendment was defeated by a roll call vote of 11 to 22.

#### YEAS

Mr. Hyde  
Mr. Sensenbrenner  
Mr. Conyers  
Mrs. Schroeder  
Mr. Frank  
Mr. Berman  
Mr. Boucher  
Mr. Nadler  
Mr. Watt  
Mr. Becerra  
Mr. Serrano

#### NAYS

Mr. Moorhead  
Mr. McCollum  
Mr. Gekas  
Mr. Coble  
Mr. Smith (TX)  
Mr. Gallegly  
Mr. Canady  
Mr. Inglis  
Mr. Goodlatte  
Mr. Buyer  
Mr. Hoke  
Mr. Bono  
Mr. Heineman  
Mr. Bryant (TN)  
Mr. Chabot  
Mr. Flanagan  
Mr. Barr  
Mr. Bryant (TX)  
Mr. Reed  
Mr. Scott  
Ms. Lofgren  
Ms. Jackson Lee

#### COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings

and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the in the descriptive portions of this report.

#### COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

#### NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

#### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(C)(3) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1240, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, March 27, 1995.*

Hon. HENRY J. HYDE,  
*Chairman, Committee on the Judiciary,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 1240, the Sexual Crimes Against Children Prevention Act of 1995, as ordered reported by the House Committee on the Judiciary on March 22, 1995. CBO estimates that enacting H.R. 1240 would not result in any significant cost to the federal government. Because enactment of H.R. 1240 would not affect direct spending or receipts, pay-as-you go procedures would not apply to the bill.

This bill would direct the U.S. Sentencing Commission to increase the prison sentences for those persons convicted of sexually exploiting children. These enhanced sentences would include sentences for sexual crimes where computers were used to transmit material for the recruitment of children. In addition, H.R. 1240 would enable the federal government to prosecute people who sell obscene material or broadcast it on cable or subscription television under the Racketeer Influenced and Corrupt Organizations law. Finally, the bill would require the U.S. Sentencing Commission to conduct a study on the relationship between sexual crimes and sentences imposed.

According to the U.S. Sentencing Commission, the sexual crimes addressed by H.R. 1240 are usually prosecuted by state authorities rather than federal authorities. Assuming that this situation continues, CBO estimates that the increased sentences under this bill would have no significant impact on the operating costs of federal prisons. In addition, CBO estimates that the cost to prepare the

U.S. Sentencing Commission study would not be significant. Also, because the bill would not affect state sentencing guidelines, CBO estimates that enacting H.R. 1240 would not affect the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman.

Sincerely,

JAMES L. BLUM  
(For June E. O'Neill, Director).

#### INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 1240 will have no significant inflationary impact on prices and costs in the national economy.

#### SECTION-BY-SECTION ANALYSIS

##### *Sec. 1. Short title*

Section 1 states the short title of the bill as the "Sexual Crimes Against Children Prevention Act of 1995."

##### *Sec. 2. Increased penalties for certain conduct in sexual exploitation of children*

Section 2 of the bill directs the United States Sentencing Commission to amend the sentencing guidelines to increase the base offense levels for offenses involving the creation of, or trafficking in, child pornography. The increases are to be at least two levels. These increases will cause the sentence range for a first-time offender convicted of creating child pornography, when no sentence enhancement factors are present, to be increased from the current 57–71 months to at least 70–87 months. The sentencing range applicable to a first-time offender convicted of trafficking in child pornography, when no sentence enhancement factors are present, will increase from the current 18–24 months to at least 24–30 months.

##### *Sec. 3. Increased penalties for use of computers in sexual exploitation of children*

Section 3 of the bill directs the United States Sentencing Commission to amend its sentencing guidelines to provide for an enhancement to the applicable base offense level when an offender uses a computer to commit crimes involving the trafficking in child pornography or advertising to buy or sell child pornography. While these actions are illegal under present law, and the base offense levels for these crimes are increased by section 2 of the bill, section 3 mandates an enhancement of at least three offense levels if the offender used a computer to commit either of those offenses.

##### *Sec. 4. Increased penalties for transportation of Children with Intent to engage in criminal sexual activity*

Section 4 directs the United States Sentencing Commission to increase the base offense level for the crime of transporting minors across state lines for the purpose of prostitution or criminal sexual activity. The increase is to be at least three levels. The resulting

modification in sentence range would increase the punishment for a first-time offender, when no sentence enhancement factors are present, from the current 21–27 months to at least 30–37 months.

*Sec. 5. Predicate offenses for RICO*

Section 5 of the bill amends the definition of “predicate acts” in the RICO statute so that all obscenity offenses under Title 18 of the United States Code are included. Prior to 1988, all obscenity offenses were included as RICO predicate acts. Additional obscenity offenses were added to Title 18 in 1988, but these new crimes were not included in the definition of predicate acts. Section 5 corrects that omission.

*Sec. 6. Technical correction*

Section 6 makes a technical amendment to correct an erroneous cross-reference in one of the new child crime statutes enacted as part of the Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. No. 103–322). That act added a new section 2245 to Title 18 and caused the existing section 2245 to be renumbered as new section 2246. That act also added new section 2423(b), which contained a cross-reference to the existing section 2245. As a result of the enactment of new section 2245, the cross-reference in section 2423(b) to section 2245 was incorrect and should have been a reference to new section 2246. Section 5 of H.R. 1240 makes this technical correction.

*Sec. 7. Report by the United States Sentencing Commission*

Section 7 requires the United States Sentencing Commission to submit a report to Congress concerning offenses involving sexual conduct with children. The Commission is required to submit its report to Congress within 180 days from the date of enactment of the bill. While the Commission is directed to make any recommendations it deems appropriate with respect to these crimes, the bill requires the Commission to study certain aspects of these crimes and make appropriate recommendations in light of this analysis.

Specifically, the Commission is to analyze the sentences that judges have imposed for sexual abuse crimes (18 U.S.C. §§ 2241, 2242, 2243, and 2244) when the victim was under the age of 18; crimes involving child pornography (18 U.S.C. §§ 2251 and 2252); and the crimes involving interstate transportation of minors for immoral purposes or international travel for the purpose of engaging in a sexual act with a minor (18 U.S.C. § 2423). The Commission is to recommend any modification to its sentencing guidelines that may be appropriate with respect to those offenses in light of its analysis. Additionally, the Commission is to include in its report an analysis of the type of substantial assistance upon which judges have granted the government’s motion for a downward departure from the sentencing guidelines in cases involving offenses under the child pornography statutes (18 U.S.C. §§ 2251 and 2252).

The report mandated by section 7 also directs the Commission to conduct a survey of the recidivism rate for offenders convicted of committing sexual crimes against children. That section of the report also is to include an analysis of the impact on recidivism that results from sexual abuse treatment provided during or after incar-

ceration or both, and an analysis of whether increased penalties would reduce recidivism for sexual crimes against children.

#### AGENCY VIEWS

No written views were provided by the Administration.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

### **TITLE 18, UNITED STATES CODE**

\* \* \* \* \*

#### **PART I—CRIMES**

\* \* \* \* \*

### **CHAPTER 96—RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS**

\* \* \* \* \*

#### **§ 1961. Definitions**

As used in this chapter—

(1) “racketeering activity” means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891–894 (relating to extortionate credit transactions), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), [sections 1461–1465 (relating to obscene matter)] *chapter 71 (relating to obscenity)*, section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), sec-



tion 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), sections 2251–2252 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341–2346 (relating to trafficking in contraband cigarettes), sections 2421–24 (relating to white slave traffic), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of that title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), punishable under any law of the United States, or (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act.

\* \* \* \* \*

## **CHAPTER 117—TRANSPORTATION FOR ILLEGAL SEXUAL ACTIVITY AND RELATED CRIMES**

\* \* \* \* \*

### **§ 2423. Transportation of minors**

(a) \* \* \*

(b) TRAVEL WITH INTENT TO ENGAGE IN SEXUAL ACT WITH A JUVENILE.—A person who travels in interstate commerce, or conspires to do so, or a United States citizen or an alien admitted for permanent residence in the United States who travels in foreign commerce, or conspires to do so, for the purpose of engaging in any sexual act (as defined in section [2245] 2246) with a person under 18 years of age that would be in violation of chapter 109A if the sexual act occurred in the special maritime and territorial jurisdiction of the United States shall be fined under this title, imprisoned not more than 10 years, or both.

\* \* \* \* \*

# ADDITIONAL VIEWS OF THE HONORABLE ZOE LOFGREN

The Committee process for this bill fell far short of what which would have produced a law to provide tough sentences and meaningful protection for children. Rather than take a considered look at a very serious subject, the Committee instead chose to play politics and move forward with a largely insignificant measure merely to allow the majority to check off another item on their Contract on America. This callous attitude toward the safety and well being of our children is extremely disturbing.

Crimes against children, particularly those of a sexual nature, are among the most heinous and tragic that exist in our society. Children are, by their very nature, innocent and vulnerable—unable to protect themselves. It is our job to protect them.

The sexual exploitation of children is a crime that can have permanent and devastating effects on the psyche and well being of a child for the duration of his or her life. Numerous studies have shown that the childhood abuse rate of convicted criminals far exceeds that of the general population. Victims of abuse are also more likely to perpetuate the same abuse when they become adults, creating a cycle of tragedy. These crimes have a far greater impact than the terrible consequences for the individual child.

The Federal sentencing procedures are very complicated, and the Committee was not allowed the time to fully consider the sentencing for these crimes, not did we have any hearings or testimony from experts on the subject. My initial reaction to the sentences for creating child pornography or transporting children for the purpose of prostitution is that they are shockingly low. For this reason I wanted to substantially increase the number of years these people spend in prison.

The Committee bill instead raises the sentencing guidelines for creation of child pornography from about 5 to 6 years up to around 7 to 8 years for the first offense. The guidelines for interstate child prostitution would go from 21 to 27 months up to 27 to 33 months. This means less than three years for someone who faces prostitution upon children. Further, information provided by the Sentencing Commission indicates that even today's low sentences are not imposed by judges in roughly a quarter of the cases. Something should be done about this. Clearly, there is a need to look not only at advisory sentencing guidelines, but at the underlying criminal statute to make sure that those who abuse children are taken out of circulation.

I tried to offer amendments to the Committee bill that would have enhanced these penalties significantly, but because of the "Band-Aid" approach of the bill, my amendments were ruled non-germane. Because I was trying to offer a real change in the punishment of child prostitutes and pornographers, my proposals were non-germane to a bill that offered only token modifications.

The Chairman of the Subcommittee on Crime has assured me that this bill is not our final examination of the punishment for child pornography and prostitution, and the bill itself calls for a study of the issue by the Sentencing Commission, but we have lost this opportunity to act not to provide meaningful protection for children. I hope that we will revisit this matter expeditiously, but

in a careful and considered manner. The prostitution and exploitation of our children is far too serious to treat in the cursory way that this bill has done.

ZOE LOFGREN.

